

Local Government Association briefing

No deal and local government

13 August 2018



Background

- During the EU referendum in 2016, the LGA was neutral on the issue of EU continued membership. Like the country, there were differing views amongst our members.
- Since the referendum, the LGA has been highlighting the most important opportunities and risks for local government resulting from the UK's exit from the EU. In our [conference publication](#) of July 2018, we summarised these issues which we have established through widespread consultation with Local Government.
- Over the summer of 2018, the Government intends to publish a number of technical papers setting out the impact of a 'no deal'¹ scenario and how the country should prepare for such a scenario.
- The Government and the European Union have both stressed that 'no deal' is a least-preferred option. This paper has been developed and delivered in that spirit.
- It offers the headline issues for local government under a 'no deal' scenario and advises Government on the key issues that would need to be addressed through national action.
- The paper is not a comprehensive list of every opportunity and risk for local government. It provides headline issues in advance, of and to influence, the technical papers to be delivered by Government.
- Council services cover such a huge range of issues (from waste collection to children's welfare). As such, councils are invited to provide details of any 'no deal' scenarios where action by national government is needed and can either respond directly to the Government proposed publications on 'no deal' to be published over the summer² or to submit any views to Brexit@local.gov.uk and the LGA will provide summaries to Government.

Laws regulating Local Government Services

Many local government services are affected by EU rules and regulations, including waste management, environmental standards, trading standards and procurement. The Withdrawal Act 2018 ensures that there is legal certainty and no cliff edge for councils as those EU laws that underpin key services (such as waste management and trading standards) on exit day would continue to apply through UK law, even under 'no deal'.

¹ Our scenario planning definition for 'no deal' is that the EU and the UK are unable to reach a final settlement on the UK's exit by March 2019. The UK leaves the EU without an exit agreement and the current draft Withdrawal Treaty falls including those sections where there is a consensus today. We are also assuming that there is no UK/EU trade deal on our future relationship.

² The LGA will provide signpost on our web once published.

Briefing

Under a 'no deal' scenario, we must highlight that the relevant Statutory Instruments (SI) would need to be in place by 29 March 2019 to ensure legal certainty for councils, including the SIs to allow UK authorities to take over the regulatory roles of EU agencies. The Competition and Markets Authority (CMA) might manage UK state aid, for example. This is a necessity for councils to ensure the effective delivery of public services.

There will also be some issues of transition to resolve. For example, a council may be half-way through a major procurement exercise using EU processes and systems. There is no certainty that councils would continue to have access to EU systems under a 'no deal' scenario. UK alternatives would need to be in place, without which procurement processes could be set back and costs incurred by councils.

'No deal' will also mean the absence of an implementation period to the end of 2020 agreed with the EU. The LGA supports this transitional arrangement to help create continuity and an effective period of change. During this period most EU laws will continue to apply in the UK. However, the LGA has set out that Brexit is the opportunity to both amend and strengthen former EU laws to help local communities. In our conference publication we set out a short-list of laws which could be amended or strengthened to support more decisions being taken at the local level. This includes more flexible procurement rules, easier state aid rules for projects of local benefit, and a strengthening of food hygiene laws.

Under a 'no deal' scenario, there would be an immediate opportunity to consider a reform programme which changes EU laws. Such a reform programme would have to be underpinned by the legal certainties set out above.

A new constitutional settlement

Under a 'no deal' scenario, all EU legislative, enforcement and judicial powers would immediately return to the UK, with no implementation period. Consequently, under the current UK constitutional settlement, powers would return immediately to Whitehall, Stormont, Cardiff Bay and Holyrood. The LGA and the local government associations of Wales, Scotland and Northern Ireland have been clear that Brexit must create the opportunity for a devolution of powers beyond central government to local communities and cannot result in a centralisation of powers. Therefore, under a no deal scenario, there must be the consideration of a new central-local agreement across the UK which results in the devolution of powers to local communities through local government, as well as giving local government a more formal role in law-making.

We have also made the case that local government has rights and responsibilities in EU law which need to be transferred across to the UK after Brexit. Government has supported this case and the detail of how this will be delivered in the UK is expected in a Parliamentary Statement. Under a 'no deal' scenario, these rights and responsibilities would need to be in place immediately as, again without such arrangement, there is a risk of further centralisation of power in Whitehall.

Regeneration and other funding sourced from the EU

Under a 'no deal' scenario, the UK would lose access to European Structural and Investment Funding (ESIF), worth £5.6 billion to local communities in England (2014-20). However, through a Parliamentary Statement in July 2018, the Treasury announced that in the event of 'no deal' the Government would 'underwrite' ESIF funding until the end of 2020. The LGA welcomed this announcement as a positive step, which provides some certainty that there will be no gap between EU funding streams and domestic replacements. More detail is however needed.

We would want to ensure that there was a very simple process in place for communities to access these emergency funds and we would work with Government to ensure that this happens.

The Government has committed to a UK replacement for EU funds. Councils need to know quickly how they will be able to bid, and receive guarantees that the UK Shared Prosperity Fund (SPF) will at least match the funding from the current ESIF funds and be in place from 1 January 2021.

It is already proposed that, from the beginning of the transition period next year, the UK would no longer be eligible for billions of pounds worth of European Investment Bank (EIB) monies reserved for EU members. Under a 'no deal' scenario, our calls for a successor to the loan, guarantee, and equity funding offered by the EIB remains the same.³

Workforce

The LGA has set out clearly the number of non-UK EU workers that provide vital public services. This includes 7 per cent of social care staff in England.⁴ Non-UK EU construction and agricultural workers are also vital for many local economies and projects. We set out the reliance of local economies on non-UK EU workers in our submission to the Migration Advisory Committee.⁵

The current draft Withdrawal Treaty sets out a reciprocal agreement between the EU and the UK. It provides for 'settled-status' for those (non-UK) EU citizens⁶ living in the UK and gives such rights to UK citizens living elsewhere in the EU. This provides short-medium term assurance about residency and employment rights and for the delivery of vital public services.

In the event of 'no deal', there will of course be no Withdrawal Treaty. As such the provision for a reciprocal agreement on 'settled status' contained in the draft Treaty will fall.

We have to consider the impact of no deal on both residents in the UK and UK citizens in other parts of the EU.

We are assuming that, as the Withdrawal Act 2018 confirms that all EU rules are transferred into UK law, Government is able to guarantee the residency and employment rights of non-UK, EU citizens in the UK and these rights would continue without pause in the immediate aftermath of Brexit. This scenario has been set out in independent research.⁷ We want clear assurance from Government in this area through its technical papers on no deal. Such an assurance is needed as many vital private and public services rely on non-UK, EU workers. If such an assurance cannot be given, as we set out in our conference report, emergency legislative measures will be needed to protect local public services.

Beyond Brexit day, for both individuals and employers, there will nevertheless be uncertainty about residency and employment rights. In the absence of reciprocal agreements with the EU, the UK law could be changed quickly. There are provisions in the Withdrawal Act for UK law to be amended through secondary

³ <https://local.gov.uk/about/news/lga-government-urged-clarify-access-vital-infrastructure-funding-post-brexit>

⁴ Skills for Care (2017), *The state of the adult social care sector and workforce in England*

⁵ <https://www.local.gov.uk/parliament/briefings-and-responses/response-migration-advisory-committee-call-evidence-contribution>

⁶ We use a general term of non-UK EU resident in this paper. There are of course complexities in residency rights relating to the EEA as a whole and Irish citizens residency rights are covered by under legislation. We use this term for simplicity

⁷ Cost of No Deal: p 18. <http://ukandeu.ac.uk/wp-content/uploads/2017/07/Cost-of-No-Deal.pdf>

legislation. The UK may choose to implement 'settled status' unilaterally. In the absence of an implementation period to 2021, UK immigration rules could be developed earlier than expected. Whilst we are assuming legal continuity immediately after exit (even under no deal), we also anticipate real concerns in communities about rights in the longer term. Any disruption to skills supply would have an impact on public services which, especially in some local areas, rely on a high percentage of non-UK EU workers in sectors where there are already skills shortages.

Importantly, councils will need to assure their communities and ensure that EU employees running vital private and public services have certainty in the medium to long term.

Under no deal, there is much uncertainty about the rights of UK nationals resident in other parts of the EU. EU law gives UK citizens' rights to residency and employment in other EU countries. Under a 'no deal' scenario (in the absence of a reciprocal agreement on settled status), where a UK citizens' employment or residency rights in another EU state are derived from that UK citizen being from an EU member-nation, such rights may fall on exit day. This will vary across the 27 remaining nations as domestic law on residency varies. At this stage we can only speculate on the impact for local government in the UK. Some people may want to return to the UK, and those who do may require significant support from council services. Families in the UK are likely to seek advice from their council about parents or family members abroad.

Certainty is vital. The Government's 'no deal' technical papers must provide detail and give assurance in these areas and set out both immediate and long-term legal certainty for residents and our employees in vital public services. We need clarity that the assumptions we are making about the legal continuity of citizens' rights is correct and that there are firm longer term plans. Through such national statements, councils will be able to assure their communities and businesses.

The delivery of public services and benefits

Local government provides care and support to non-UK EU citizens. The Home Office [Statement of Intent](#) sets these out clearly:

EU citizens living in the UK, along with their family members, will be able to stay and continue their lives, with the same access to work, study, benefits and public services that they enjoy now.⁸

We have set out where we need clarity in term of residency and employment rights. The Government's technical papers must also establish clarity for councils as providers of care and support especially around housing benefit, homelessness support and our support for vulnerable adults and children.

Ports, public health and local regulation

In our conference publication we set out the impact on local authority services at ports of entry under a 'no deal' scenario.

At airports and seaports local government is responsible for checking food and feed imports and products of animal origin. This vital work protects the integrity of our food systems and helps to ensure that our residents are safe.

⁸ Forward: Home Office Statement of Intent
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf

The City of London, which provides port health services at a number of ports, estimates that, were imports from the EU subject to the same checks as imports from elsewhere (as they could be under a 'no deal' scenario), there could be an increase of up to 25 per cent in the checks that they are required to undertake. National Trading Standards has estimated that its teams at ports and borders would need to double the number of inspections they currently undertake in order to maintain the same proportion of inspections if consumer goods from within the EU come within the remit of its work in the event of a 'no deal' scenario. This would require substantial new resources.

Our duties and inspections at ports – and beyond – are reliant upon UK access to European-wide databases which provide much of the intelligence for assessing risks. Under 'no deal', there would be no access to such EU databases and more checking is inevitable, and valuable protections are weakened, if there is no viable UK alternative database.

Without substantial extra resources, more checks are likely to lead to delays at ports, particularly where there is limited space to process them. A national decision could of course be taken to keep ports of entry moving quickly to avoid queues, on the assumption that regulatory services inland could assess the risk of goods when they are sold locally. However, local regulatory capacity has reduced by around 50 per cent following cuts to local government funding, and without additional resources will be unable to absorb any additional work arising as a result of EU exit.

Local trading standards and environmental health teams operating inland from ports would also be similarly affected by the loss of intelligence gathered from UK access to key EU databases. This would reduce their ability to target their work and enforcement activity appropriately.

Local environmental health teams may also support local businesses to trade internationally, through the process of issuing export health certificates for certain food products being exported to third countries. A 'no deal' scenario could significantly increase the number of certificates required by traders who do not currently require them to export to the EU, with resource implications for local authorities and others involved in providing them. It is a concern that there is limited information about the amount of additional checks that this could amount to, although we understand that the Food Standards Agency is seeking to develop this.

The planning for future scenarios at a national level is likely to be within the responsibility of several government departments. The Department for Environment, Food and Rural Affairs (DEFRA) and Food Standards Agency will be considering how we regulate food, feed and animal origin products at the ports. The Department of Business, Energy and Industrial Strategy (BEIS) will be examining the issue of consumer goods, at ports of entry and inland. The Department for Transport (DfT) will be looking at how to avoid queues at our ports. Given the differing impact of these issues at different ports of entry and other locations, our call for place based Technical Notes is reaffirmed.

Goods and services

Under a 'no deal' scenario, we need to consider whether imported goods used by councils could be subject to new tariffs and thus services would be subject to new costs.

We would have to assume the absence of any free trade agreement (FTAs) with the EU and the UK reverting to World Trade Organisation (WTO) rules.

There would be many choices available to the UK such as a policy of tariff free

trade with every nation or the UK may choose to try and 'roll over' the current EU tariffs. What is clear is that under WTO rules, the UK would have to treat the EU the same as other trading nations.⁹ Thus if the UK continued to apply tariffs to countries outside the EU (such as the US), there would have to be the same tariffs to pay on many imported goods supplied to councils in the UK from the EU. Councils, or more likely their suppliers, currently buy such EU goods tariff free.¹⁰

Whilst a 'no deal' Brexit would in theory leave the UK free to set its own tariffs on imported goods (within WTO limits),¹¹ Government is nevertheless likely to adopt tariffs replicating the EU's.¹²

Goods imported from the EU into the UK could therefore be subject to the same tariffs as those goods imported from elsewhere, including:

- 8.5 per cent (average) on agricultural products, such as food e.g. 35 per cent on dairy products and 6 per cent on coffee and tea¹³
- 10 per cent on cars¹⁴ and car parts, 4.3 per cent on transport equipment¹⁵
- IT equipment: no tariffs for imports from a wide range of countries¹⁶
- furniture (wooden and metal office furniture): no tariffs¹⁷
- around 5 per cent on housing maintenance materials (e.g. chemicals: 4.5 per cent, paints 6 per cent)¹⁸
- 11.5 per cent on clothing/uniforms,¹⁹ 9 per cent on textiles²⁰
- 0.9 per cent on wood/paper²¹

As it is the importer, rather than the exporter, who has to pay the tariff, councils would have to pay these new tariffs when they themselves import goods directly from a supplier in the EU.²² This will be very rare however. Much more commonly it will be the UK supplier (not the council itself) who would have to pay new tariffs, if it were importing goods from the rest of the EU. Whether these costs can then be passed on to the local authority customer (or indeed devolved or central government bodies) depends on the nature of the contract the UK supplier has with the council(s).

The contract may be fixed price, in which case the supplier will have to absorb the tariff costs; or the contract may allow for some variability in the price, in which case the supplier can pass on some or all of the tariff costs onto the local authority. If there is no provision for the supplier to pass on price increases mid-contract, we would need to be assured that the supplier was able to absorb such costs. In some cases, the supplier may seek to pass on price increases to councils when the contract is renewed. This may have a significant impact on councils' budgets.

We have stated that there are many scenarios regarding import tariffs under no deal. The issue that we note is that, under the scenario above, there would be costs

⁹ WTO 'Most Favoured Nation' (MFN) rules.

¹⁰ The Cost of No Deal, p17. <http://ukandeu.ac.uk/wp-content/uploads/2017/07/Cost-of-No-Deal.pdf>

¹¹ <https://fullfact.org/economy/post-brex-it-trade-tariffs/>;

<https://blogs.fco.gov.uk/julianbraithwaite/2017/01/23/ensuring-a-smooth-transition-in-the-wto-as-we-leave-the-eu/>;

<https://blogs.fco.gov.uk/julianbraithwaite/2017/01/23/ensuring-a-smooth-transition-in-the-wto-as-we-leave-the-eu/> ;

<http://ukandeu.ac.uk/explainers/no-deal-the-wto-option/> ; <https://fullfact.org/europe/uk-leaving-eu-trade/>;

The House of Commons Library also confirms that the UK is likely to inherit the EU's tariff regime when it renegotiates its 'schedules' as an independent member of the WTO.

¹³ Pg 8. <http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

¹⁴ Vehicles are often leased rather than purchased by councils, but tariffs may still impact.

¹⁵ Pg 8 <http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

¹⁶ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1522>

¹⁷ Figure from WTO Tariff Download Facility, July 2018,

https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm

¹⁸ Pg 8 <http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

¹⁹ Pg 8 <http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

²⁰ <https://www.export.gov/article?id=Exporting-Textiles-and-Textile-Products-to-the-EU-FAQs>

²¹ Pg 8 <http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

²² WTO rules may however allow the UK to set lower tariffs for imports from developing countries.

to councils which will impact on budgets and local services. The LGA is currently looking at the detail of this scenario and the detail of possible costs to councils.

If UK-EU27 trade levels (both import and export) continue as currently even in the event of a no deal scenario, the income from new tariffs from goods imported from the EU would be a gain to the Treasury.²³ Keeping tariff income from goods imported from rest of the world would also be a gain to Treasury as it will no longer have to pass on the income to the EU. As such the Government's technical papers on no deal must set out how public service deliverers will be compensated in full from any new costs arising as a result of such tariffs.

In a 'no deal' scenario, there will also be a range of non-tariff barriers, which would constitute the bulk of the costs for the national economy of doing business without FTAs, including: border checks, custom controls and compliance with different product standards and regulations.²⁴

Local elections 2019

Voting and standing rights in local elections are set out in European law and underpinned in UK law through the Representation of the People's Act. Under the current draft Withdrawal Treaty, the EU Treaty provisions in this area will not apply in the UK, though UK law remains. The same scenario would apply under a 'no deal'.

The LGA has sought clarity from the Cabinet Office on this issue. The most urgent issue is the 2019 local elections. Whilst we are assuming that the tenure of EU nationals already elected will remain, councils need to understand the rules for those voting and seeking election next year. The deadline for the delivery of nomination papers is on the 3 April 2019, a few days after we leave the EU.

Parties are currently selecting their candidates for 2019 and councils have to ensure that elections are run in the most effective way.

We welcome any resident who wants to participate in local civic life. It will be very difficult if candidates are selected and later asked to stand down because of a change in rules.

Local impact

There is already much speculation and little agreement about the national impact of a 'no deal' scenario. Since the referendum, the LGA and councils have produced evidence that, under any scenario, the impact of Brexit will differ depending on the local economy. This will be the case under a 'no deal' scenario. In this spirit, we would call upon Government to work with councils and their local partners on technical notes which consider local as well as the national impact of 'no deal'.

²³ The cost of no deal, p12 <http://ukandeu.ac.uk/wp-content/uploads/2017/07/Cost-of-No-Deal.pdf>

²⁴ <http://ukandeu.ac.uk/explainers/no-deal-the-wto-option/>